

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 5316 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KALPESHKUMAR ARUNBHAI SHAH

Versus

RAMNIKLAL MOTICHAND SHAH (LAKHANI)

Appearance:

MR SD PATEL for Petitioners
MR EE SAIYED for Respondent No. 1
NOTICE SERVED for Respondent No. 2
MR BY MANKAD, APP for Respondent No. 5

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 04/10/1999

ORAL JUDGEMENT

Heard learned counsel appearing for the parties.
It is the case of the petitioners (original accused
nos.4 ,5 & 6) that the petitioner no.1 being son-in-law
of respondent no.1 is dragged into the litigations and
false complaint has been filed. Petitioner no.2 is the

wife of petitioner no.1 and daughter of respondent no.1 complainant. Petitioner no.3 is the father of petitioner no.1 and father-in-law of petitioner no.2 (daughter of respondent no.1 complainant). According to petitioner no.1, he has married with the daughter of original complainant respondent no.1 because of his personal love and affection with her and their marriage being inter-caste marriage, complainant did not like. Though dispute mainly relates to the property, the original complainant has tried to give threats. Petitioner no.3 is made accused because he is the father of petitioner no.1 and father-in-law of the daughter of respondent no.1 complainant who is also petitioner no.2 herein.

Other side has denied the allegations and submitted that complainant is being harassed by both the petitioners and their relatives who are staying at Valsad and Vapi. I am told some unfolded story and the criminal proceedings initiated in other Court, but it seems that the basis dispute is something else and is not really brought on record. Without commenting on the merits of the matter and ignoring all other aspects, parties are ready to proceeding with the criminal case pending before the learned Judicial Magistrate, F.C., Vadodara. However, it has been requested on behalf of the petitioners that they should be exempted from personal appearance before the Court as the petitioners are the residents of Bombay and they can avoid hardship and inconvenience and apprehension of their involvement in any other litigation especially criminal proceedings. If such an exemption is granted, they have no objection if the criminal complaint proceeds on merits and they would be permitted to withdraw this application. It is the privilege of the Court to have accused present before it, but looking to the facts and circumstances of the case and when the petitioners are agreeable to proceed with the criminal case, it would be in the interest of justice to exempt the petitioners from personal appearance on each day of hearing by exercising inherent powers. I agree that to grant exemption is a privilege of the Court who conducts trial, but in the facts and circumstances of the case, I am inclined to exercise said powers under sec. 482 of the Cr.P.Code by granting exemption to both the petitioners (original accused nos.4,5 & 6) from personal appearance before the trial court concerned on each and every date of hearing. However, it is clarified that both the petitioners shall have to remain present before the Court concerned on the date of recording of plea of the accused and on the date of pronouncement of judgment so that there can be effective adjudication of the complaint on merits and in accordance with law. There is no question of identity of the accused because

parties are near relatives. Complainant is also having no objection if the exemption as observed above is granted to the petitioners and they are also ready and willing to proceed with the case on merits.

In view of above observations and grant of exemption from personal appearance, learned counsel appearing for the petitioners seeks permission to withdraw this application. Permission is granted. Application stands disposed of as withdrawn. It is clarified that nothing in the above order, shall come in the way and influence the trial Court in deciding the criminal case pending before the trial Court on merits and in accordance with law.

Writ to be sent to the concerned trial Court.

4.10.1999 [C.K. BUCH, J]

*rawal